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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
First session
Vienna, 19-29 January 1999
Item 3 of the provisional agenda
Adoption of the agenda and organization of work

Annotated provisional agenda and proposed organization of work

Provisional agenda

1. Opening of the first session of the Ad Hoc Committee.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Consideration of the draft convention against transnational organized crime.
5. Consideration of the additional international legal instruments against:
   (a) Trafficking in women and children;
   (b) Illegal trafficking in and transporting of migrants;
   (c) Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.
6. Adoption of the report of the Ad Hoc Committee on its first session.

V.98-57233 (E)

Annotations

1. Opening of the first session of the Ad Hoc Committee

The first session of the Open-ended Intergovernmental Ad Hoc Committee on the Elaboration of a Comprehensive International Convention against Transnational Organized Crime will be convened on Tuesday, 19 January 1999, at 10 a.m. Originally, the Centre for International Crime Prevention had planned to organize the meeting from 18 to 29 January. Pursuant to General Assembly resolution 52/214 of 22 December 1997, section A, 18 January was designated as an official holiday in 1999 to be observed by the United Nations Office at Vienna, the Office for Drug Control and Crime Prevention and other United Nations units. Consequently, the Ad Hoc Committee will have one day less at its disposal for its first session. Every effort will be made to make up the time lost during the remaining days of the first session.

2. Election of officers

On the recommendation of the Economic and Social Council (Council resolution 1998/14), the General Assembly adopted resolution 53/111 of 9 December 1998, in which it decided to accept the recommendation of the Commission on Crime Prevention and Criminal Justice to elect Ambassador Luigi Lauriola (Italy) as the Chairman of the Ad Hoc Committee.

In accordance with established practice, the Ad Hoc Committee may wish to elect five officers: four vice-chairmen and a rapporteur.

Based on previous practice and taking into account General Assembly decision 33/417 of 14 December 1978, on the organization of the work of United Nations bodies, it is urged that the regional groups start their consultations on the nomination of candidates to fill the elective offices well in advance of the beginning of the session, with a view to agreeing on a slate of candidates that is equal to the number of offices to be filled, thus allowing all officers of the Ad Hoc Committee to be elected by acclamation and dispensing with the requirement of a secret ballot.

3. Adoption of the agenda and organization of work

(a) Adoption of the agenda

The provisional agenda for the first session of the Ad Hoc Committee was prepared in accordance with General Assembly resolutions 53/111 and 53/114 of 9 December 1998 and with the recommendations of the third session of the informal working group established to assist the Chairman of the Ad Hoc Committee (the informal group of the "Friends of the Chair") at its third session, held at Vienna, on 5 and 6 November 1998.

(b) Proposed organization of work for the first session of the Ad Hoc Committee

The proposed organization of work for the first session of the Ad Hoc Committee, which is contained in the annex, has been prepared in pursuance of the above-mentioned resolutions of the General Assembly and the recommendations of the informal group of the "Friends of the Chair" at its third session. It is intended to facilitate consideration of the agenda items within the time and in accordance with the conference services available.

The resources available permit the holding of two plenary meetings per day.

In view of the nature of the work of the Ad Hoc Committee and the commitment of States to complete the process of the elaboration of the convention and the additional international legal instruments by the year 2000, it is suggested that the Ad Hoc Committee avoid devoting time to statements of a general nature. Such a course of action would ensure that the time and resources available to the Ad Hoc Committee could be best utilized so that substantive progress could be made in the implementation of its mandate.

In accordance with General Assembly resolutions 53/111 and 53/114 , the Ad Hoc Committee will be expected to devote attention to the elaboration of international legal instruments against trafficking in women and children, illegal trafficking in and transporting of migrants and illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The informal group of the "Friends of the Chair", at its third session, decided to recommend to the Ad Hoc Committee to begin at its first session its consideration of the draft international instrument against illegal trafficking and transporting of migrants and the draft international instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The draft international instrument against trafficking in women and children would be introduced to the Ad Hoc Committee at its first session; the Ad Hoc Committee would begin its consideration of that draft instrument at its second session, to be held at Vienna from 8 to 12 March 1999. Accordingly, the proposed organization of work would allow one and one half days for the consideration of each of the draft international instruments against illegal trafficking in and transporting of migrants and illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The informal preparatory meeting of the Ad Hoc Committee, held at Buenos Aires from 31 August to 4 September 1998, recommended that, in order to fully explore commonalities and avoid overlap of the draft instrument against trafficking in women and children and the draft instrument against illegal trafficking in and transporting of migrants, the Ad Hoc Committee could discuss the two draft instruments on consecutive days at its first session. The proposed organization of work has been prepared in compliance with that recommendation.

4. Consideration of the draft convention against transnational organized crime

The World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I.A). In the Global Action Plan, the World Ministerial Conference requested the Commission on Crime Prevention and Criminal Justice to initiate the process of requesting the views of Governments on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein. In its resolution 49/159 of 23 December 1994, the General Assembly approved the Naples Political Declaration and Global Action Plan and urged States to implement them as a matter of urgency.

The Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held at Buenos Aires from 27 to 30 November 1995, adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1, annex). In the Buenos Aires Declaration, the ministers and other representatives of ministries of States in Latin America and the Caribbean who attended that workshop expressed the interest of their Governments in the advancement of the examination of the advantages of the elaboration of an international convention against organized transnational crime during the fifth session of the Commission and proposed elements for inclusion in the convention.

In its resolution 51/120 of 12 December 1996, the General Assembly took note of the proposed draft United Nations framework convention against organized crime, introduced by Poland at the fifty-first session of the General Assembly (A/C.3/51/7, annex). In addition, the Assembly requested the Commission to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime, taking into account the views of all States on that matter, with a view to finalizing its work on that question as soon as possible.

The African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Dakar from 21 to 23 July 1997, adopted the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption (E/CN.15/1998/6/Add.1, para. 4). In the Dakar Declaration, the ministers and other representatives of States in the African region expressed their strong support for the elaboration of an international convention against organized transnational crime and made specific suggestions to that end (E/CN.15/1998/6/Add.1, annex II). In addition, they called upon all States to contribute to and be actively engaged in the elaboration of such an instrument, making every possible effort to resolve differences and overcome conceptual or substantive difficulties, in order to permit the process to be completed in the shortest time possible.

The General Assembly, in its resolution 52/85 of 12 December 1997, adopted on the recommendation of the Commission at its sixth session, took note of the report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime, held at Palermo, Italy, from 6 to 8 April 1997 (E/CN.15/1997/7/Add.2, annex), and expressed its appreciation to the Fondazione Giovanni e Francesca Falcone for organizing and acting as host to the meeting. In the same resolution, the Assembly decided to establish an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime, which would submit a report thereon to the Commission at its seventh session.

The intergovernmental group of experts held its meeting at Warsaw from 2 to 6 February 1998. The report of that meeting, which was submitted to the Commission at its seventh session, contained an outline of options for contents of the international convention against organized transnational crime (E/CN.15/1998/5, para. 72).

The Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Manila from 23 to 25 March 1998, adopted the Manila Declaration on the Prevention and Control of Transnational Crime (E/CN.15/1998/6/Add.2, para. 4). In the Manila Declaration, the ministers and other representatives of States in Asia and the Pacific welcomed the results achieved by the intergovernmental group of experts. They expressed their belief that the outline of options for the contents of the convention would serve as a solid basis for its further elaboration. They strongly supported such an endeavour and confirmed their commitment to play an active role in the efforts to resolve differences and overcome conceptual or substantive difficulties so that the process could speedily move towards its conclusion. They urged the Commission to take advantage of the existing momentum and the consensus achieved on the desirability of such a convention, with a view to speeding up the process of its drafting and finalizing such a project as soon as possible.

At its seventh session, the Commission established an in-sessional working group on the implementation of the Naples Political Declaration and Global Action Plan, which discussed the draft convention against organized transnational crime. The working group agreed that the elaboration of the convention must proceed at a vigorous pace, with a view to completing the negotiation process, if possible, by the year 2000. The working group carried out a thorough discussion of the options compiled in the report of the meeting of the intergovernmental group of experts. In particular, it discussed the chapters on scope of application of the

convention; participation in an organized crime group; money-laundering; corporate criminal liability; sanctions; confiscation; transparency of transactions; jurisdiction; extradition; obligation to extradite or prosecute (*aut dedere aut judicare*); extradition of nationals; and consideration of requests for extradition.[1]

The General Assembly, in its resolution 53/111 requested the Ad Hoc Committee, in carrying out its work, to take into account, *inter alia*, the report of the intergovernmental group of experts established pursuant to Assembly resolution 52/85 and the report of the working group on the implementation of the Naples Political Declaration and Global Action Plan.

The informal working group established to assist the Chairman of the Ad Hoc Committee (the informal group of the "Friends of the Chair"), held its first session at Rome from 17 to 18 July 1998. At that session, it reviewed and endorsed the provisional agenda of the informal preparatory meeting of the Ad Hoc Committee, which the Government of Argentina had generously offered to host at Buenos Aires in order to enable the work on the elaboration of the convention to continue without interruption. The informal group also reviewed a provisional timetable for its work and the work of the Ad Hoc Committee, which had been prepared by the Secretariat.

The informal preparatory meeting of the Ad Hoc Committee was held at Buenos Aires from 31 August to 4 September 1998. By completing the first reading of the outline of options for contents of the convention and discussing several outstanding issues regarding draft articles 1-13, the informal preparatory meeting produced a new consolidated draft text of the convention, which will provide the basis for the work of the Ad Hoc Committee at its first session. The informal preparatory meeting was assisted by contributions submitted by Governments.

The informal group of the "Friends of the Chair" at its second session, held at Buenos Aires during the informal preparatory meeting of the Ad Hoc Committee, approved the timetable of its sessions and those of the Ad Hoc Committee until the year 2000, when the Ad Hoc Committee is expected to end its functions.

The informal group of the "Friends of the Chair at its third session", was held at Vienna from 5 to 6 November 1998, reviewed and endorsed the provisional agenda and organization of work for the first session of the Ad Hoc Committee.

Documentation

Report of the first session of the informal working group to assist the Chairman of the Ad Hoc Committee (A/AC.254/2)

Report of the informal preparatory meeting of the Ad Hoc Committee (A/AC.254/3)

Draft United Nations Convention against Transnational Organized Crime (A/AC.254/4)

Proposals and contributions received from Governments (A/AC.254/5)

Report of the third session of the informal working group to assist the Chairman of the Ad Hoc Committee (A/AC.254/6)

Background documents

Report of the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime, held at Warsaw from 2 to 6 February 1998 (E/CN.15/1998/5)

Report of the Commission on Crime Prevention and Criminal Justice on its seventh session (E/1998/30 and Corr.1)

Inter-American Convention against Corruption (E/1996/99)

5. Consideration of the additional international legal instruments against:

(a) Trafficking in women and children;

(b) Illegal trafficking and transport of migrants;

(c) Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

In its resolution 53/111 the General Assembly requested the Ad Hoc Committee to discuss the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking and transporting of migrants, including by sea. The Assembly requested the Ad Hoc Committee, in carrying out this work, to take into account, *inter alia*, Economic and Social Council resolutions 1998/18, 1998/19 and 1998/20.

In its resolution 53/114 the General Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention as well as of appropriate international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and illegal trafficking in and transporting of migrants, including by sea.

Documentation

Report of the first session of the informal working group to assist the Chairman of the Ad Hoc Committee (A/AC.254/2)

Report of the informal preparatory meeting of the Ad Hoc Committee (A/AC.254/3)

Elements for an international legal instrument against illegal trafficking in and transporting of migrants: proposal submitted by Austria and Italy (A/AC.254/4/Add.1)

Draft protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials: proposal submitted by Canada (A/AC.254/4/Add.2)

Elements for an international legal instrument against trafficking in women and children: proposal submitted by Argentina and the United States of America (A/AC.254/4/Add.3)

Proposals and contributions received from Governments (A/AC.254/5/Add.1)

Report of the third session of the informal working group to assist the Chairman of the Ad Hoc Committee (A/AC.254/6)

Ongoing international initiatives related to the elaboration of an international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (A/AC.254/7)

Background documents

Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (A/AC.254/CRP.1)

Inter-American Convention on International Traffic in Minors (A/AC.254/CRP.2)

6. Adoption of the report of the Ad Hoc Committee on its first session

The Ad Hoc Committee is to adopt a report on its first session, the draft of which will be prepared by the Rapporteur.

In its resolution 53/111, the General Assembly requested the Ad Hoc Committee to submit a progress report to the Commission on Crime Prevention and Criminal Justice at its eighth session. The second session of the Ad Hoc Committee is scheduled to be held at Vienna from 8 to 12 March 1999. The progress report will comprise a summary of the reports of the first and second sessions of the Ad Hoc Committee and will be accompanied by the revised version of the draft convention and other international legal instruments.

Notes

[1] *Official Records of the Economic and Social Council, 1998, Supplement No. 10* (E/1998/30 and Corr.1), annex III.

Annex

Proposed organization of work of the first session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, to be held at Vienna from 19 to 29 January 1999

Date	*Time*	*Item*	*Plenary*
Tuesday, 19 January	10 a.m. to 1 p.m.	1	Opening of the first session of the Ad Hoc Committee
		2	Election of officers
		3	Adoption of the agenda and organization of work
		4	Consideration of the draft convention against transnational organized crime
	3 to 6 p.m.	4	Continuation of the discussion
Wednesday, 20 January, to Friday, 22 January	10 a.m. to 1 p.m. and 3 to 6 p.m.	4	Continuation of the discussion
Monday, 25 January	10 a.m. to 1 p.m.	4	Continuation of the discussion
	3 to 6 p.m.	5 (c)	Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition
Tuesday, 26 January	10 a.m. to 1 p.m. and 3 to 6 p.m.	5 (c)	Continuation and conclusion of the discussion
Wednesday, 27 January	10 a.m. to 1 p.m. and 3 to 6 pm.	5 (b)	Consideration of the additional international legal instrument against illegal trafficking in and transporting of migrants
Thursday, 28 January	10 a.m. to 1 p.m.	5 (b)	Continuation and conclusion of the discussion
	3 to 6 p.m.	5 (a)	Introduction of the additional international legal instrument against trafficking in women and children
		4	Continuation of the discussion
Friday, 29 January	10 a.m. to 1 p.m.	4	Continuation and conclusion of the discussion
	3 to 6 p.m.	6	Consideration and adoption of the report of the Ad Hoc Committee on its first session

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**Ad Hoc Committee on the Elaboration of a
Convention against Transnational Organized Crime**
First session
Vienna, 19-29 January 1999

INFORMAL GROUP OF THE "FRIENDS OF THE CHAIR" OF THE AD HOC COMMITTEE ON THE ELABORATION OF THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

FIRST MEETING

ROME, 17-18 JULY 1998

MAIN POINTS OF DISCUSSION

1. The first meeting of the informal group of the "Friends of the Chair" was convened in Rome, Italy, from 17 to 18 July 1998, hosted by the *Direzione Nazionale Antimafia*. The following countries were represented: Argentina, Australia, Austria, Azerbaijan, Brazil, Bulgaria, Canada, China, Chile, Colombia, Finland, France, Germany, Italy, Japan, Mexico, Netherlands, Poland, Romania, Russian Federation, Spain, Sudan, Sweden, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, and United States of America.

2. The meeting was opened by the Director-General of the *Direzione Nazionale Antimafia*, who welcomed the participants and reiterated the commitment of his Government to support the efforts of the international community to elaborate an effective international instrument against transnational organized crime. The meeting was chaired by Ambassador Luigi Lauriola in his capacity as Chairman-elect of the Ad Hoc Committee on the Elaboration of the Convention against Transnational Organized Crime.

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*The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee the report of the First Meeting of the Informal Group of the "Friends of the Chair" held at Rome on 17-18 July 1998. This document was previously issued in English, French and Spanish as CICP/CONV/WP.4 for the purposes of the Informal Preparatory Meeting of the Ad Hoc Committee on the Elaboration of a Comprehensive Convention against Transnational Organized Crime held at Buenos Aires from 31 August to 4 September 1998.

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3. The meeting adopted the following agenda:

1. Adoption of the agenda
2. Review of issues and organizational matters
3. Work programme of the "Friends of the Chair"
4. Work programme of the Ad Hoc Committee
5. Preparations for the informal preparatory meeting of the Ad Hoc Committee
6. Other business

4. The meeting had before it the following documents: (a) Report of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime (E/CN.15/1998/5); (b) draft resolution II on transnational organized crime (Commission on Crime Prevention and Criminal Justice, Report on the Seventh Session, (E/CN.15/1998/11, p. 4)), (c) draft resolution III on measures to regulate firearms for the purpose of combating illicit trafficking in firearms (E/CN.15/1998/11, p. 16); (d) draft resolution IV on action against illegal trafficking in migrants, including by sea (E/CN.15/1998/11, p. 18); (e) draft resolution V on action to combat international trafficking in women and children (E/CN.15/1998/11, p. 20); (f) annex III, Report of the working group on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (E/CN.15/1998/11, p. 80); and (g) annex V, Draft international convention against the smuggling of illegal migrants and the draft protocol aiming at combating the trafficking and transport of migrants by sea (E/CN.15/1998/11, p. 106).

5. In addition, Finland, France and Tunisia submitted written contributions to the work of the Ad Hoc Committee (documents CICP/CONV/WP.1, CICP/CONV/WP.2 and CICP/CONV/WP.3 respectively). Finland's contribution consisted of a memorandum for the meeting and a draft consolidated text of the proposed Convention, which took into account the progress made at the seventh session of the Commission on Crime Prevention and Criminal Justice. France submitted a draft addressing the statement of objectives, definitions, scope of application, offences and sanctions, jurisdiction, identification, freezing, seizure and confiscation, liability of corporate entities, and prosecution, sentencing and adequate sanctions. Tunisia offered comments on articles 1, 2, 6, 7, 8 and 10 of the text contained in document E/CN.15/1998/5. On the request of France and Tunisia, the Secretariat would make their contributions available as background documentation at the informal preparatory meeting of the Ad Hoc Committee to be held in Buenos Aires from 31 August to 4 September 1998, if possible translated into all official languages of the United Nations. The meeting agreed that the Secretariat should prepare a consolidated text of the draft Convention. This text should include all proposals contained in the documents mentioned in paragraph 14 of draft resolution II on transnational organized crime, recommended by the Commission on Crime Prevention and Criminal Justice at its seventh session for adoption by the General Assembly. The consolidated text submitted by Finland would serve as the basis for the work of the Secretariat in preparing this consolidated text. The meeting asked the Secretariat to prepare for the first meeting of the Ad Hoc Committee, to be held in January 1999, an overview of relevant provisions of other international legal instruments.

6. The Secretariat stressed the importance of advanced planning of the meetings which the Ad Hoc Committee will require to complete its work, in line with the recommendations of the Commission, by the year 2000. Advanced planning was necessary in order to ensure the availability of conference services and interpretation in all official United Nations languages. Although the work programme of the Ad Hoc Committee had been tentatively outlined up to the eighth session of the Commission on Crime Prevention and Criminal Justice, an indication of the needs of the Ad Hoc Committee between May 1999 and the date envisaged for the adoption of the Convention was required. After discussing the matter, the meeting agreed that the attached tentative schedule of work (annex I) reflected the needs of the Ad Hoc Committee, and could guide the Secretariat in seeking to obtain the necessary conference services, including interpretation and translation.

7. Several participants expressed concern about the lack of interpretation at the meetings of the "Friends of the Chair", which in their view limited their ability to fully participate in the work of this group. The Secretariat explained that lack of resources made the provision of interpretation and translation services to such informal meetings even in the working languages of the United Nations extremely difficult. Nonetheless, the Secretariat affirmed that it would undertake every effort possible to secure such services for the meetings of the group. A number of participants called upon States to make voluntary contributions to facilitate such endeavour. The meeting noted that the issue of adequate resources that would permit full support of the work of the Ad Hoc Committee by the Secretariat, especially in view of the expected acceleration of that work, may have to be reviewed by the Commission at its eighth session.

8. The meeting discussed the most appropriate way to structure the work of the Ad Hoc Committee in order to allow it to fulfil its mandate, particularly in regard to the consideration of international instruments on trafficking in migrants, including by sea, trafficking in firearms, and trafficking in women and children. The meeting noted that the draft resolution containing the mandate of the Ad Hoc Committee had established the guidelines for it. In this vein, the Ad Hoc Committee should pursue the elaboration of the Convention against Transnational Organized Crime as its main task, while allocating time at each of its meetings for the discussion of the above-mentioned international instruments or protocols.

9. The Chairman called on the States that had taken the initiative of suggesting elaboration of international instruments on trafficking in firearms and trafficking in women and children to submit as soon as possible draft texts to the Secretariat. Participants pointed out that the conventions adopted by the Organization of American States on these subjects can be made available to the Ad Hoc Committee in English, French and Spanish as reference material. The participants from the United States made available to the meeting the text of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, in English. It was also pointed out that draft texts on any additional topics that States may wish the Ad Hoc Committee to consider would greatly facilitate its work.

10. The meeting discussed the organization of work of the informal preparatory meeting of the Ad Hoc Committee, to be held in Buenos Aires. The group suggested that it would be useful for that meeting to continue the work begun during the seventh session of the Commission on Crime Prevention and Criminal Justice by completing the first reading of the document that emerged from the meeting held in Warsaw on 2 to 6 February 1998 (E/CN.15/1998/5). The conclusion of the first reading would make it possible to begin negotiations on a streamlined text. In line with paragraph 9 above, some time should be allocated at the meeting in Buenos Aires for discussion of the issues related to the additional international instruments or protocols and their relationship to the Convention. On this basis, the meeting prepared the attached provisional agenda for the meeting in Buenos Aires (annex II). Progress achieved at the meeting in Buenos Aires would make it possible for the "Friends of the Chair" to resolve many of the organizational and procedural questions that remained open. For this reason, it was decided to organize the second meeting of the group on Saturday, 5 September 1998, immediately following the conclusion of the meeting in Buenos Aires.

11. The issue of the bureau of the Ad Hoc Committee was raised. However, the meeting thought that a thorough discussion of that matter would be more appropriately held after the Economic and Social Council took action on the draft resolutions submitted to it by the Commission on Crime Prevention and Criminal Justice at its seventh session.

ANNEX I

INDICATIVE TIMETABLE FOR THE ELABORATION OF THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

1998

MEETING	DATES	PLACE
First informal meeting of "Friends of the Chair"	17-18 July 1998	Rome
Informal Preparatory Meeting of the Ad Hoc Committee	31 August-4 September 1998	Buenos Aires
Second informal meeting of the "Friends of the Chair"	5 September 1998	Buenos Aires
Third informal meeting of the "Friends of the Chair"	Two days in November 1998	Vienna

1999

MEETING	DATES	PLACE
First Meeting of the Ad Hoc Committee	18-29 January 1999	Vienna
Second Meeting of the Ad Hoc Committee	8-12 March 1999	Vienna
Third Meeting of the Ad Hoc Committee	At least three days during the eighth session of the Commission on Crime Prevention and Criminal Justice (27 April-6 May 1999)	Vienna
Fourth Meeting of the "Friends of the Chair"*	June or July 1999	Vienna
Fourth Meeting of the Ad Hoc Committee	One or two weeks in September 1999	Vienna
[Progress report to GA]	September 1999	
Fifth Meeting of the "Friends of the Chair"*	Two days in November or December 1999	Vienna

2000

MEETING	DATES	PLACE
Fifth Meeting of the Ad Hoc Committee	One or two weeks in January 2000	Vienna
[Tenth United Nations Congress]	10-17 April 2000	Vienna
[Ninth session of the Commission on Crime Prevention and Criminal Justice]	18-20 April 2000	Vienna
Sixth Meeting of the "Friends of the Chair"*	Two days in May 2000	Vienna
Sixth Meeting of the Ad Hoc Committee	One or two weeks in August or September 2000	Vienna
Millennium Assembly or Plenipotentiary Conference for the approval of the convention	Autumn 2000	

*Should resources become available through voluntary contributions or otherwise, these meetings could be converted into meetings of the Ad Hoc Committee with full interpretation in the six official languages of the United Nations.

ANNEX II

INFORMAL PREPARATORY MEETING OF THE AD HOC COMMITTEE ON THE ELABORATION OF THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Buenos Aires, 31 August-4 September 1998

Provisional agenda and organization of work

Monday, 31 August 1998

10 a.m - 10.30 a.m.

1. Opening of the meeting

10.30 a.m. - 1 p.m.

2. Adoption of the agenda and organization of work
3. Completion of the first reading of the outline of options (E/CN.15/1998/5): articles 15-30

3 p.m.- 6 p.m.

Continuation of item 3

Tuesday, 1 September 1998

10 a.m. - 1 p.m.

Continuation and conclusion of item 3

3 p.m. - 6 p.m.

4. Consultations on specific provisions of the draft convention

Wednesday, 2 September 1998

10 a.m. - 1 p.m. and 3 p.m. - 6 p.m.

Continuation of item 4

Thursday, 3 September 1998

10 a.m. - 1 p.m.

Continuation and conclusion of item 4

3 p.m. - 6 p.m.

5. Discussion of additional international instruments, pursuant to draft resolution II on transnational organized crime (E/CN.15/1998/11)

Friday, 4 September 1998

10 a.m. - 1 p.m.

Informal consultations

3 p.m. - 6 p.m.

6. Consideration and adoption of the report of the meeting

7. Closing of the meeting

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
First session
Vienna, 19-29 January 1999

REPORT OF THE INFORMAL PREPARATORY MEETING OF THE OPEN-ENDED INTERGOVERNMENTAL AD HOC COMMITTEE ON THE ELABORATION OF A COMPREHENSIVE INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME, HELD AT BUENOS AIRES FROM 31 AUGUST TO 4 SEPTEMBER 1998

INTRODUCTION

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council approved resolution 1998/14 and recommended it for adoption by the General Assembly at its fifty-third session. Pursuant to that resolution, the Assembly would establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime, and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. The Assembly would also decide to accept the recommendation of the Commission and the Council to elect Luigi Lauriola (Italy) as the Chairman of the ad hoc committee. In view of the expected favourable action by the Assembly, and in order to prepare for the future work of the ad hoc committee, the first meeting of the informal group of the Friends of the Chair was held at Rome from 17 to 18 July 1998. To enable the continuation of the work on the elaboration of the convention without interruption, the Government of Argentina offered to host an informal preparatory meeting of the ad hoc committee at Buenos Aires from 31 August to 4 September 1998. In connection with the informal preparatory meeting, the informal group of the Friends of the Chair held its second meeting (annex I).

V.98-58058 (E)

I. SUMMARY OF THE DISCUSSION

2. The informal preparatory meeting completed the first reading of the outline of options for contents of the international convention against transnational organized crime by reviewing articles 14 through 30. The first reading had begun at the seventh session of the Commission, held at Vienna from 21 to 30 April 1998. For that purpose, the informal preparatory meeting decided to use the working paper submitted by Finland (CICP/CONV/WP.1).

3. In completing the first reading of the outline of options, the informal preparatory meeting discussed the following issues: mutual legal assistance; investigation of offences; transfer of proceedings; recognition of foreign judgements; protection of victims and witnesses; law enforcement cooperation; collection and sharing of information on organized crime; training and technical assistance; prevention; the role of the United Nations and other relevant organizations; relation with other conventions; dispute settlement; and the standard final clauses of the convention.

4. Several suggestions for consolidation of the text and proposals for new or amended provisions were made. These, together with specific observations on either the existing text or the substance of the provisions, were included in the new version of the draft convention contained in document CICP/CONV/WP.21.[1] It was the general understanding of the informal preparatory meeting that this new version of the draft convention was only intended as the basis for discussion and negotiations that would begin at the first meeting of the ad hoc committee scheduled to take place at Vienna from 18 to 29 January 1999, to be preceded by the third meeting of the informal group of the Friends of the Chair, scheduled to take place at Vienna from 5 to 6 November 1998.

5. After the completion of the first reading, the informal preparatory meeting discussed several outstanding issues regarding articles 1 through 13, which had been examined on a preliminary basis at the first meeting of the informal group of the Friends of the Chair.

6. Regarding the statement of objectives and scope of the convention, after extensive discussion, the Chairman noted that apparently no significant progress could be made at the current stage beyond that achieved by the Commission at its seventh session. The Chairman urged delegations to submit substantive proposals to the ad hoc committee at its first meeting in order to advance consideration of the issue. The discussion at the first meeting of the ad hoc committee would be based on the existing text (CICP/CONV/WP.21),[1] the proposals of France, Sweden and Germany[2] and other proposals that delegations might submit in response to the appeal of the Chairman. In connection with the discussion of the scope of the convention, some delegations felt that the convention should somehow address the issue of corruption and bribery. One delegation pointed out that this issue could be dealt with either within the convention or through a separate protocol. While there were no concrete proposals at the current stage, the matter would need to be reviewed at a later time. Some delegations were of the view that the articles related to cooperation between States would to a large extent depend on the scope of the convention. Consequently, States were likely to accept more obligations under the convention if the scope was precisely defined.

7. The delegation of Turkey submitted a paper (CICP/CONV/WP.10)[2] explaining its position on the question of the scope of the convention. It stated its preference for the inclusion in the convention of an illustrative list of offences which would include terrorism. The other delegations that spoke on the issue, while sharing the concern about terrorism, noted that there were numerous international conventions that specifically dealt with the issue of terrorism. They were of the view that terrorism was addressed in other forums, such as the Sixth Committee of the General Assembly.

8. The representative of the International Institute of Higher Studies in Criminal Sciences (ISISC) expressed the willingness of his Institute to host meetings of drafting groups or groups of experts that might be required

to advance the process of the negotiation of the convention or additional international legal instruments that the ad hoc committee would be requested to consider. Various delegations supported the suggestion of possibly holding meetings at the Institute. The Chairman indicated that the offer would be considered as needed.

9. The informal preparatory meeting discussed the additional international legal instruments or protocols whose elaboration the ad hoc committee had been asked to consider. In that connection, the Governments of Austria and Italy submitted a working paper containing elements for an international legal instrument against illegal trafficking and transport of migrants (CICP/CONV/WP.21, annex I).[1] The purpose of the initiative was to provide the international community with a tool that would effectively deal with that particularly heinous form of transnational criminality without criminalizing the behaviour of migrants. In the discussion that ensued, many delegations welcomed the working paper and considered it a good basis for further discussion. One delegation expressed concern about the proposed element regarding the non-criminal liability of migrants. It was suggested by one delegation that the international instruments against illegal trafficking and transport of migrants and against illicit trafficking in women and children should be discussed jointly. Several delegations expressed the view that the two instruments addressed substantively different matters that needed separate discussion, also in order not to jeopardize their finalization. It was suggested, however, that one way to fully explore commonalities and avoid overlap was to discuss the two instruments on consecutive days of the meeting of the ad hoc committee scheduled to take place from 18 to 29 January 1999.

10. In connection with the proposed international legal instrument on the trafficking of women and children, the Chairman called on interested delegations to submit a draft text in time for consideration by the first meeting of the ad hoc committee. Some delegations expressed concern about the potential of overlap between the work of the ad hoc committee and the work of the Committee on the Rights of the Child, which was currently elaborating an optional protocol to the Convention on the Rights of the Child related to the sale of children. It was pointed out, however, that the ad hoc committee was approaching the matter from the perspective of international criminal law and cooperation in criminal matters. Therefore, the likelihood of overlap was limited.

11. The Government of Canada presented a working paper containing elements for discussion in the elaboration of the proposed international legal instrument against illicit manufacturing of and trafficking in firearms, their components and ammunition (CICP/CONV/WP.11).[2] The Government of the United Kingdom offered for consideration the principles and plan of action adopted by a team of senior experts of the seven major industrialized countries and the Russian Federation (Group of Eight), contained in CICP/CONV/WP.5.[3] The delegation of Mexico offered to prepare, in consultation with other interested delegations, a draft document for the first meeting of the ad hoc committee, based on the Convention of the Organization of American States on the matter and the principles and plan of action of the Group of Eight. The Chairman called on interested delegations to prepare a draft text in time for consideration by the ad hoc committee at its first meeting. Several delegations informed the meeting of a number of initiatives currently under way on the issue of firearms and small arms, including the offer of the Government of Switzerland to host an international conference in the year 2000 on the subject that could deal, *inter alia*, with illicit trade in small arms. Many delegations expressed concern about the potential for overlap between those initiatives and the work of the ad hoc committee, and called for coordination not only within the United Nations system and between Governments at the international level, but also at the national level.

II. ADOPTION OF THE REPORT

12. At its ninth plenary meeting, on 4 September 1998, the informal preparatory meeting adopted the present report.

III. ORGANIZATION OF THE MEETING

A. Opening of the meeting

13. In his opening address, the Minister of Justice of Argentina reiterated the unwavering support of his Government to the work of the United Nations in crime prevention and criminal justice in general and to the elaboration of the convention in particular. As Argentina had been one of countries that had proposed the elaboration of a convention at the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, the meeting at Buenos Aires which launched the process of such elaboration was a source of particular pride for his country. He recognized that there were difficulties in rapidly reaching consensus on a number of issues, including definitions and the scope of application of the convention. However, he considered it crucial that all countries rise to the challenge and expressed his confidence that the negotiation process would be completed by the year 2000. The Minister also recalled the keen interest of his country in action against illicit trafficking in women and children and called for an instrument or protocol that would adequately deal with that form of criminal activity by filling the normative gap that currently existed.

14. The Executive Director of the Office for Drug Control and Crime Prevention of the Secretariat expressed his gratitude to the Government of Argentina for its generosity in acting as host for the informal preparatory meeting. He referred to the current circumstances that had made the convention the essential centrepiece of a new global strategy to attack the structural underpinnings of organized crime worldwide. Organized crime had benefited from globalization of the world economy, imitating legitimate business as it expanded in the global economy. He stressed that in spite of all its growth and universalization, organized crime was a historical phenomenon that had a life cycle with a beginning, a development and an end. The single most important accomplishment in the last 15 years of combating organized crime was to challenge and destroy the myth of invincibility of criminal organizations. The new convention should open the doors for much better cooperation between countries. The Executive Director called for a structure that would allow for practical tools that practitioners could use. The convention should bring about harmonization of laws on issues such as participation in a criminal organization or conspiracy and criminalization of money-laundering. The convention should also ensure that bank secrecy and the lack of transparency in financial transactions no longer constituted barriers to criminal investigations. Witness protection programmes should also figure prominently in the convention, extending to cover cooperating suspects who had proved invaluable to dismantling criminal organizations. The Executive Director also emphasized the importance of the three proposed additional instruments or protocols and asked the Committee to make every effort possible to conclude their elaboration together with the convention.

B. Attendance

15. The informal preparatory meeting was attended by representatives of the following States: Algeria, Angola, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Ecuador, Finland, France, Germany, Greece, Haiti, Ireland, Italy, Japan, Jordan, Kuwait, Lebanon, Lesotho, Mauritius, Mexico, Netherlands, Nicaragua, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

16. The following United Nations Secretariat units, bodies and specialized agencies were represented: Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund and International Maritime Organization.

17. The following affiliated regional institutes and associate institutes attended: Latin American Institute for the Prevention of Crime and the Treatment of Offenders, International Centre for Criminal Law Reform and Criminal Justice Policy and International Institute of Higher Studies in Criminal Sciences.

18. The following intergovernmental organizations also attended: European Union, International Criminal Police Organization, International Federation of Red Cross and Red Crescent Societies, International Organization for Migration, Organisation for Economic Cooperation and Development and Organization for Security and Cooperation in Europe.

19. The following non-governmental organizations in consultative status with the Economic and Social Council were represented: International Council of Women (general consultative status); Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) (International Movement of Catholic Students) (special consultative status); National Rifle Association of America/Institute for Legislative Action, Sporting Shooters' Association of Australia (roster).

C. Election of officers

20. The informal preparatory meeting was chaired by Luigi Lauriola (Italy), Chairman-elect of the ad hoc committee.

D. Adoption of the agenda

21. At the first plenary meeting, on 31 August 1998, the informal preparatory meeting adopted the following agenda:

1. Opening of the meeting.
2. Adoption of the agenda and organization of work.
3. Completion of the first reading of the outline of options (E/CN.15/1998/5): articles 14-30.
4. Consultations on specific provisions of the draft convention.
5. Discussion of additional international instruments, pursuant to draft resolution II on transnational organized crime (E/CN.15/1998/11).
6. Consideration and adoption of the report of the meeting.
7. Closing of the meeting.

E. Documentation

22. In addition to the background documentation presented by the Secretariat, the informal preparatory meeting had before it working papers submitted by the Governments of Canada, Finland, France, Germany, Sweden, Tunisia, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The documents before the meeting are listed in annex II.

Notes

[1]Issued as A/AC.254/4.

[2]See A/AC.254/5.

Annex I

REPORT OF THE SECOND MEETING OF THE INFORMAL GROUP OF THE FRIENDS OF THE CHAIR OF THE AD HOC COMMITTEE ON THE ELABORATION OF THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, HELD AT BUENOS AIRES ON 3 SEPTEMBER 1998

1. The second meeting of the informal group of the Friends of the Chair was convened on 3 September 1998 in connection with the informal preparatory meeting of the ad hoc committee. The informal group had before it an indicative timetable for the elaboration of the convention against transnational organized crime (appendix I). The Secretariat explained the method of elaborating the timetable and indicated that every effort would be made to absorb the additional cost of the meetings indicated therein. However, voluntary contributions would be necessary to strengthen the ability of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat to provide the ad hoc committee with the substantive and technical servicing that it required.

2. The informal group approved the indicative timetable on the understanding that the Secretariat would try to identify alternative dates for the third meeting of the informal group of the Friends of the Chair and that dates after July 1999 were indicative, since meetings and the durations thereof would depend on the pace of the negotiation process.

3. The Government of the United States announced that it had pledged a voluntary contribution of 511,000 United States dollars for 1998 to the United Nations Crime Prevention and Criminal Justice Fund. One of the purposes of this contribution was to support the process of the development of the convention. The contribution should assist the Centre in covering costs of meetings, including interpretation.

4. The Chairman welcomed the contribution made by the Government of the United States and called upon other States to also contribute extrabudgetary resources.

5. The Chairman drew the attention of the regional groups to the opportunity of beginning consultations on the nominations for the bureau of the ad hoc committee.

Appendix

INDICATIVE TIMETABLE OF MEETINGS OF THE AD HOC COMMITTEE ON THE ELABORATION OF THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND OF THE INFORMAL GROUP OF THE FRIENDS OF THE CHAIR

1998

Meeting	*Dates*
Third meeting of the Friends of the Chair	5-6 November

1999[a]

Meeting	*Dates*
First meeting of the ad hoc committee	18-29 January
Second meeting of the ad hoc committee	8-12 March
Third meeting of the ad hoc committee	At least three days during the eighth session of the Commission on Crime Prevention and Criminal Justice (27 April-6 May)
Fourth meeting of the Friends of the Chair	5-9 July
Fourth meeting of the ad hoc committee	4-15 October
Fifth meeting of the Friends of the Chair	22-23 November

2000

Meeting	*Dates*
Fifth meeting of the ad hoc committee	10-21 January
Sixth meeting of the Friends of the Chair	19-23 June
Sixth meeting of the ad hoc committee	7-18 August
Plenipotentiary conference	25-29 September[b]

[a]Dates after July 1999 are indicative. The number and duration of meetings will depend on the pace of the negotiation process.

[b]The duration of the proposed plenipotentiary conference will need to be reviewed.

Annex II

LIST OF DOCUMENTS

Document number	*Title or description*
E/CN.15/1998/5	Report of the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime (Warsaw, 2-6 February 1998)
E/1998/30	Report on the seventh session of the Commission on Crime Prevention and Criminal Justice, chapter I (section A, draft resolution II; section B, draft resolutions III, IV and V) and annexes III and V.
CICP/CONV/WP.1	Working paper by Finland–options for the (draft) United Nations convention against transnational organized crime
CICP/CONV/WP.2	Proposal by France–United Nations convention against organized [transnational] crime
CICP/CONV/WP.3	Comments of Tunisia on the draft United Nations framework convention against organized crime
CICP/CONV/WP.4	Report of the first meeting of the informal group of the Friends of the Chair of the ad hoc committee on the elaboration of the convention against transnational organized crime (Rome, 17-18 July 1998)
CICP/CONV/WP.5	Combating illegal manufacturing of and trafficking in firearms, their parts and components and ammunition, submitted by the United Kingdom of Great Britain and Northern Ireland
CICP/CONV/WP.6	Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials
CICP/CONV/WP.7	Proposal by France and Sweden on extradition
CICP/CONV/WP.8	Non-paper submitted by Germany
CICP/CONV/WP.9	Inter-American Convention on International Traffic in Minors
CICP/CONV/WP.10	Paper submitted by the delegation of Turkey
CICP/CONV/WP.11	Canadian discussion paper on the firearms protocol
CICP/CONV/WP.12	Proposed consolidation of article 19 submitted by Finland
CICP/CONV/WP.13	United States proposal on articles 18 and 23
CICP/CONV/WP.14	Elements for an international legal instrument against illegal trafficking and transport of migrants, proposal submitted by Austria and Italy
CICP/CONV/WP.15	Proposed consolidation of article 18 submitted by Finland
CICP/CONV/WP.16	Proposed consolidation of article 21 submitted by Finland

Document number	*Title or description*
CICP/CONV/WP.17	United States proposal on article 19
CICP/CONV/WP.18	United States proposal on article 4 *bis*
CICP/CONV/WP.19	Non-paper submitted by Switzerland containing views on marking of small arms and light weapons
CICP/CONV/WP.20	Draft report of the informal preparatory meeting of the ad hoc committee
CICP/CONV/WP.21	Draft United Nations convention against transnational organized crime

UNITED
NATIONS

A

General Assembly

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15 December 1998

ORIGINAL: ENGLISH

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
First session
Vienna, 19-29 January 1999

Draft United Nations Convention against Transnational Organized Crime[1]

Article 1
Statement of objectives

Option 1

1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

Option 2

1. States Parties commit themselves to cooperate to the widest extent possible in the prevention and control of transnational organized crime.

2. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy.[2]

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[1]At various stages of the drafting, certain words, sentences or entire paragraphs were placed in square brackets. In the present document, the absence of brackets should not be construed as approval of the text in question by the informal preparatory meeting held at Buenos Aires from 31 August to 4 September 1998.

[2]It was suggested that this paragraph seeking to define organized crime could be placed in a separate article on definitions (article 2 *bis* in the present draft).

V.98-58078 (E)

Pomotion of implementation

3. Each State Party shall take effective measures to promote within its territory accountability and the scrutiny of its action in the implementation of this Convention.

4. A State Party may adopt more strict or severe measures than those provided for by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime.

Article 2
Scope of application

Option 1

1. States Parties commit themselves to cooperate to the widest extent possible in combating transnational organized crime. For that purpose, the Convention shall apply to [the prevention, investigation and prosecution of] serious crime, which is defined as any offence punishable [in the requesting State] by imprisonment or other deprivation of liberty of not less than ____ years. The seriousness of the offence may also be inferred from the involvement of a criminal organization in committing the offence, the transnational effect of the offence or any other element typical of organized crime.[3]

Option 2

1. The Convention shall apply to serious crime when the circumstances provide reasonable grounds to believe that a criminal organization was involved in the commission of an offence.

2. "Serious crime" is defined as any offence punishable by imprisonment or other deprivation of liberty of a maximum of at least [...] years.[4]

3. Among the circumstances that may be taken into account in deciding whether there are reasonable grounds to believe that a criminal organization was involved are the following:

(a) The nature of the offence;

(b) The transnational character of the offence;

(c) Whether money-laundering is involved; or

(d) Whether the offence required significant planning or means for its commission.

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[3]This option would include the insertion of an illustrative list of offences into the *travaux préparatoires*. Furthermore, according to this option, the articles on, for example, extradition and mutual legal assistance could include, as grounds for refusal of assistance, "if, in view of the circumstances of the suspected offence, it evidently did not involve a criminal organization and acceding to the request would overburden the authorities of the requested State".

[4]This option would include the insertion of an illustrative list of offences into the *travaux préparatoires*.

Option 3

1. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy, in particular by:

(a) Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[5]

(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[6]

(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[7]

(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[8] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;[9]

(e) Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[10]

(f) Terrorist acts;

(g) Illicit traffic in or stealing of arms and explosive materials or devices;

(h) Illicit traffic in or stealing of motor vehicles;

(i) Corruption of public officials.

2. For the purpose of this Convention, "organized crime" includes commission of an act by a member of a group as part of the criminal activity of such organization.

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[5]United Nations publication, Sales No. E.91.XI.6.

[6]Resolution 317 (IV), annex.

[7]*League of Nations Treaty Series*, vol. 112, p. 171.

[8]United Nations, *Treaty Series*, vol. 823, No. 11806.

[9][To be completed.]

[10]United Nations, *Treaty Series*, vol. 1456, No. 24631.

Non-applicability to offences with solely domestic connections

Option 1

2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State.

Option 2

2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.

Principle of non-intervention

3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Exclusive exercise of jurisdiction and performance of functions

4. A State Party shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions that are exclusively reserved for the authorities of that other State by its domestic law.

Protocols

5. The annexed Protocols form an integral part of this Convention.

Choice of international instrument[11]

6. [insert the provision on the selection of instrument when several international instruments would be applicable]

7. States Parties may apply article(s) ____ of this Convention to other multilateral conventions to the extent agreed between States Parties.

Article 2 bis
Use of terms

For the purposes of this Convention:

(a) "Proceeds of crime" means any economic advantage from criminal offences. It may consist of property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;

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[11]This issue is also dealt with in article 24.

(b) "Predicate offence" means any crime or offence as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention.

Article 3
Participation in a criminal organization[12]

1. Each State Party shall undertake, in accordance with the fundamental principles of its domestic legal system, to make punishable one or both of the following types of conduct:

(a) Conduct by any person consisting of an agreement with one or more persons that an activity should be pursued, which, if carried out, would amount to the commission of crimes or offences that are punishable by imprisonment or other deprivation of liberty of at least [ ] years; or

(b) Conduct by any person who participates in a criminal organization, where such participation is intentional and is either with the aim of furthering the general criminal activity or criminal purpose of the group or made in the knowledge of the intention of the group to commit offences.

2. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4
Money-laundering[13]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

(a) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

(b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is the proceeds of crime;

and, subject to its constitutional principles and basic concepts of its legal system,

(c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:

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[12]It was suggested that this article provided a good basis for discussion, since it served as a bridge between civil and common law systems. However, one delegation considered the concept to be complex, requiring further analysis.

[13]It was suggested that the lack of a definition of money-laundering in this article would need to be addressed. It was also suggested that such a definition should cover a broad range of predicate offences.

(a) It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;

(b) It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

(c) Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

(a) Ought to have assumed that the property was the proceeds of crime;

(b) Acted for the purpose of making a profit;

(c) Acted for the purpose of promoting the perpetration of further criminal activity.

[4. States Parties shall take appropriate measures to ensure that assets generated by illegal activity or its proceeds are not made legal and shall take legal measures to ensure that:

(a) A person convicted as a member of organized crime shall prove the legality of the purchase of goods that belong to him [or her] or in respect of which he [or she] acts as owner, otherwise they shall be confiscated;[14]

(b) Goods that are the proceeds of the illegal activities of organized crime cannot be transferred as an inheritance, bequest or gift or in any other way;

(c) Goods that are the proceeds of illegal activities will be deemed illegal, and legal principles shall not apply to them;

(d) States shall establish fines as penalties in proportion to the sums obtained by the activities of organized crime.]

[5. States Parties shall adopt appropriate measures to apply instruments that relate to money-laundering to banking or financial markets, including stock exchanges, *bureaux de change*, etc.]

6. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

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[14]Some delegations expressed reservations stemming from difficulties of a constitutional nature regarding reversal of the burden of proof.

Article 4 bis
Measures to combat money-laundering[15]

1. Each State Party shall institute a domestic regulatory regime for financial institutions[16] doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

(a) The licensing and periodic examination of such institutions;

(b) The elimination of bank secrecy laws that may impede the operation of States Parties' anti-money-laundering programmes;[17]

(c) The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

(d) Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

(e) Requiring such institutions to report suspicious or unusual transactions.

2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

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[15]There was no discussion on this article during the informal preparatory meeting. One delegation expressed the view that this issue should be viewed taking into account other regional initiatives.

[16]The term "financial institution" includes, at a minimum, banks, other depository institutions, and appropriate non-bank providers of financial services (such as securities dealers or brokers, commodities futures dealers or brokers, currency dealers and exchangers, fund transmitters and casinos).

[17]One country expressed reservations regarding the elimination of bank secrecy.

5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the 40 recommendations of the Financial Action Task Force on Money-Laundering, as well as other relevant anti-money-laundering initiatives endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 5
Corporate [criminal] liability

Option 1

Each State Party shall, as necessary, establish in its domestic legislation the possibility that legal persons may be held liable if they [knowingly commit or otherwise participate in], [or derive profits from], an offence established in article(s) ___ [alternatively: an offence covered by this Convention].[18] Subject to the fundamental legal principles of the State Party, such liability of the legal person may be criminal, civil, administrative or commercial. Such liability shall be without prejudice to the criminal liability of the natural persons who were the perpetrators of the offences or of their accomplices. Each State shall ensure, in particular, that legal persons may be penalized in an effective, proportionate and dissuasive manner and that material and economic sanctions may be imposed on them.[19]

Option 2

Each contracting State shall consider including in its domestic legislation the possibility of holding private bodies or public corporate bodies of private benefit liable for profiting from organized crime or for operating as cover for a criminal organization.

Article 6
Effective prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] liable to sanctions that take into account the grave nature of those offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.[20]

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[18]The scope of this Convention is still subject to deliberation. For this reason, throughout the present text the alternatives "an offence established in article(s) ___" (which in the current draft would be articles 3 and 4, on participation in a criminal organization, and money-laundering) and "an offence covered by this Convention" (which would have a broader scope, as established by article 2) are provided, as appropriate.

[19]This paragraph combines options 1 and 3 in the earlier text of document CICP/CONV/WP.1 and was not discussed at the informal preparatory meeting.

[20]With respect to the sanctions referred to here, it was noted that, according to article 1, paragraph 4, States may adopt stricter or more severe measures than those foreseen in the Convention. Another suggestion was to include a provision that would encourage States to consider the commission of an offence by a criminal organization an aggravating circumstance for the purpose of sanctioning.

2. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that are the subject of this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences that are the subject of this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that is the subject of this Convention, and a longer period where the alleged offender has evaded the administration of justice.

5. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence that is the subject of this Convention, who is found within its territory, is present at the necessary criminal proceedings.

Article 7
Confiscation

Option 1

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from an offence established in article(s) ___ [alternatively: from an offence covered by this Convention] or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in an offence established in article(s) ___ [alternatively: in an offence covered by this Convention].

Option 2

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. For the purposes of paragraphs 1 and 2 of this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) ___ [alternatively: over an offence covered by this Convention], the State Party in whose territory proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, insofar as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party;

(b) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) ___ [alternatively: over an offence covered by this Convention], the requested Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party;

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party;

(d) The provisions of article ____ (on mutual assistance) are applicable *mutatis mutandis*. In addition to the information specified in article ____, paragraph ____, requests made pursuant to this article shall contain the following:[21]

(i) In the case of a request pertaining to subparagraph (a) (i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a) (ii), a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting State Party and a description of the actions requested;

(e) Each State Party shall furnish the Secretary-General with the text of any of its laws and regulations that give effect to this paragraph and the text of any subsequent changes to such laws and regulations;[22]

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[21]It was suggested that subparagraph (d) could be transferred to the article on mutual legal assistance.

[22]It was suggested that subparagraph (e) could be transferred to the article on the role of the United Nations and other organizations.

(f) If a State Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis;

(g) States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

5. (a) Proceeds of crime or property confiscated by a State Party pursuant to paragraph 1 or paragraph 4 of this article shall [, without prejudice to the rights of bona fide third parties,] be returned to its bona fide lawful owner where such owner can be identified. In other respects, said proceeds or property shall be disposed of by that Party according to its domestic law and administrative procedures;[23]

(b) When acting on the request of another State Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against organized crime;

(ii) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds of crime have been transferred or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds;

(b) If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds;

(c) Income or other benefits derived from:

(i) Proceeds of crime;

(ii) Property into which proceeds of crime have been transformed or converted; or

(iii) Property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. Each State Party may consider ensuring that the onus of proof is reversed regarding the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

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[23]It was suggested that there should be no confiscation by the State of any property to which a bona fide third party had a legitimate claim.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Cooperation under this article may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

Article 8
Transparency of transactions[24]

1. States Parties shall implement measures to detect and monitor the physical transportation of cash and bearer-negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

2. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, States Parties shall take measures to gather financial information and, as much as possible, shall facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies.

Article 9
Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) ___ when the offence is committed in the territory of that State or on board a vessel or aircraft registered in the State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The alleged offender is a national [or a habitual resident] of that State;

(b) The offence was committed against [that State or] a national of that State[; or]

[(c) The offence has substantial effects in that State].

[2 *bis*. Paragraph 2 may also apply to other offences mentioned in this Convention.]

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

4. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other multilateral treaty.

5. In a case where more than one State claims jurisdiction over an offence covered by the present Convention, the States concerned undertake to coordinate their actions in an effective manner, in particular regarding the conditions of exercising prosecution and the modalities of recourse to mutual assistance.[25]

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[24]It was noted that this article would be superseded by article 4 *bis*.

[25]It was suggested that there should be provision for the settlement of disputes over jurisdiction.

[6. A State Party shall inform the Secretary-General of the establishment of jurisdiction under paragraph 2.]

Article 10
Extradition

1. This article shall apply to the offences established by the States Parties in accordance with article(s) ___ [alternatively: to an offence covered by this Convention].

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

Option 1

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may[26] [, at its option,] consider this Convention the legal basis for extradition in respect of any offence to which this article applies. [Extradition shall be subject to the other conditions provided for by the law of the requested State.] The Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

Option 2

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it shall consider the present Convention the legal basis for extradition in respect of any offence to which this article applies. [Extradition shall be subject to the other conditions provided for by the law of the requested State.] The Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.[27]

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between them [, subject to the conditions provided for by the law of the requested State].[28]

Option 1

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

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[26]It was suggested that, as demonstrated in the implementation of similarly formulated provisions in the 1988 Convention, the use of the word "may" provided States with extensive discretion, which entailed the risk of rendering such a provision ineffective.

[27]See footnote 26 above. It was suggested that the word "shall" as used in this option would give preferential status to this Convention in extradition. Such a course of action would require much more detailed provisions on extradition.

[28]It was suggested that the substance of this paragraph could be integrated with a more general article on the relationship of this Convention to other bilateral or multilateral treaties.

Option 2

5. With respect to the offences as [defined] [covered] in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention.

[6. The offences established in article(s) ____ [alternatively: the offences covered by this Convention] shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.]

Option 1

7. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his [or her] race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

Option 2

7. Extradition shall not be granted if the requested State Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his [or her] race, religion, [gender], nationality or political opinion, or that a person's position may be prejudiced for any of these reasons.

Option 1

8. Cooperation under this article or under article(s) ____ may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

Option 2

8. Extradition shall not take place if:

(a) In respect of the person whose extradition is requested, criminal proceedings have been instituted or a judgement rendered by the judicial authorities of the requested State Party;

(b) By the date of receipt of the extradition request the statute of limitations in respect of the criminal case has elapsed under the legislation of one of the States;

(c) The act giving rise to the extradition request is deemed a political offence;

(d) The person whose extradition is requested is under the age of 18 years;

(e) The person whose extradition is requested is at risk of being subjected to persecution or discrimination on the grounds of race, religion, sex, nationality, language or political convictions;

(f) As at the date of receipt of the extradition request, the person whose extradition is requested is a citizen of the requested State;

(g) The act giving rise to the extradition request was committed entirely or in part in the territory of the requested State.

[9. For purposes of extradition between the States Parties, none of the offences established in article(s) ____ [alternatively: none of the offences covered by this Convention] shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.]

10. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

11. Subject to the provisions of its domestic law and its extradition treaties, the requested States Parties may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his [or her] presence at extradition proceedings. [Such State shall immediately make a preliminary inquiry, in accordance with its own laws.]

12. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender is found shall:

(a) If it does not extradite him [or her] in respect of an offence established in accordance with article(s) ____ [alternatively: in respect of an offence covered by this Convention], on the grounds set forth in article ____, paragraph ____, subparagraph ____, submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting State Party;

(b) If it does not extradite him [or her] in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article ____, paragraph ____, subparagraph ____, submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting State Party for the purposes of preserving its legitimate jurisdiction.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party, or the remainder thereof.

14. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

15. States Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

Article 11
Obligation to extradite or prosecute (aut dedere aut judicare)

Option 1

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established by this Convention, where the alleged offender is present in its territory and, solely on the basis of the nationality of the person sought, it does not extradite that person or conditionally extradite that person for trial pursuant to article(s) ____ to any of the States Parties that have established their jurisdiction in accordance with this article.

Option 2

1. The State Party in the territory of which the offender or the alleged offender is found, if [, solely on the basis of the nationality of the person sought,] it does not extradite that person or [temporarily] transfer] [conditionally extradite] that person for trial pursuant to article(s) ____, shall be obliged, upon request of the State Party seeking extradition or transfer, in cases where article(s) ____ applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State Party in the territory of which that person is present.

Article 12
Extradition of nationals

Option 1

1. Each State Party shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence established in article(s) ___ [alternatively: any offence covered by this Convention].

2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the request[ed] State Party.

Option 2

If a State Party denies extradition to another State Party for an offence established in article(s) ___ [alternatively: for an offence covered by this Convention] because the person sought is a national of the requested Party, the requested Party shall, upon request of the requesting Party, transfer the person to the requesting Party for trial or other proceedings and the person transferred shall be returned to the requested Party to serve any sentence imposed in the requesting Party as a result of the trial or proceedings for which transfer was made.

Option 3

If a State Party does not extradite its nationals, such Party shall undertake to make a periodic review of its domestic legislation in order to determine whether extradition or conditional extradition of nationals might be permitted.

Article 13
Consideration of requests for extradition

Option 1

1. States Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for extradition and any communication thereto shall be effected between the authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.

Option 2

1. With a view to facilitating cooperation within the framework of the Convention, States Parties shall establish central authorities, which shall communicate directly between themselves. The central authorities shall be responsible for handling incoming and outgoing requests for extradition and mutual legal assistance.

2. [Notwithstanding paragraph 1,] States Parties, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries and extraditing persons based only on warrants of arrests or judgements.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) To communicate with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State Party in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

Article 14
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legislation on legal assistance[29] in investigations, prosecutions and judicial proceedings in relation to an offence established in article(s) ___ [alternatively: to an offence covered by this Convention] and shall exercise flexibility[30] in the execution of requests for such mutual assistance.

2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[31]

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures;

(d) Examining objects and sites;

(e) Providing information and evidentiary items;

(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the appearance of persons in the requesting State;

(i) Any other type of assistance allowed by the law of the requested State.

3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual assistance in criminal matters.[32]

4. Paragraphs 6-21 shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the

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[29]Some delegations expressed the concern that this provision could limit the obligations under this article. As issues related to the manner of execution of requests for mutual assistance were governed by paragraph 10, there was no need for this provision. Other delegations felt that the provision should be retained and moved to the first line of the paragraph after the word "shall".

[30]Some delegations felt that this term was ambiguous and perhaps a better formulation could be found, as there was agreement that the purpose of the paragraph was to ensure that the article would be interpreted in a manner that would facilitate mutual assistance.

[31]Some delegations felt that article 14 should not create detailed obligations to provide specific forms of mutual assistance. In their view, paragraph 2 could instead read as follows: "States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them or pursuant to domestic law".

[32]See footnote 28 above.

corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6-21 of this article in lieu thereof.

5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.

7. States Parties shall [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree. Transfer under this paragraph shall not be for the purpose of standing trial. For purposes of this paragraph:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][33] or as otherwise agreed by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he was transferred for time served in the custody of the State to which he or she was transferred.

8. States Parties shall designate a central authority, or when necessary central authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution.[34] Central authorities shall play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization (Interpol), if possible.

9. Requests shall be made in writing or by any means capable of producing a written record[35] in a language acceptable to the requested State Party. The Secretary-General shall be notified of the language or

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[33]The expression "as soon as circumstances permit" was considered by some delegations to be ambiguous and, therefore, it was proposed to delete it.

[34]It was noted that this provision might cause difficulties in respect of territories that did not have full sovereignty.

[35]It was agreed that this expression should be deemed to include the submission of a request by modern means of communications, under circumstances that provide an indication of authenticity.

languages acceptable to each Party. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

(c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.

11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. Wherever possible and consistent with fundamental principles of domestic law, States Parties shall permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and shall ensure that perjury committed under such circumstances is a criminal offence.

14. The requesting State Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

16. Mutual legal assistance may be refused:[36]

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

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[36]Other grounds for refusal might be required. One possible additional ground might be a "discrimination clause" as in article 6, paragraph 6, of the 1988 Convention. Another ground may be a "political offence", in which case paragraph 17 would require re-examination.

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;[37]

(e) If the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

17. For the purpose of cooperation under this article, the offences covered by this Convention shall not be considered fiscal offences or political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

18. Reasons shall be given for any refusal of mutual legal assistance.

19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

20. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.[38]

21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

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[37]Some delegates expressed concern about this ground for refusal.

[38]Some delegations thought a degree of discretion could be provided to the requesting State in determining whether to provide safe conduct. One delegation expressed a reservation on this paragraph.

Article 15
Special investigative techniques

1. If permitted by the basic principles of their respective domestic legal systems, States Parties shall take the necessary measures to provide a legal basis for the use of special investigative techniques, such as controlled delivery, surveillance, including electronic surveillance, and undercover operations,[39] for the purpose of gathering evidence and taking legal action against persons involved in an offence established in article(s) ___ [alternatively: in an offence covered by this Convention].

2. States Parties shall consider extending the use of the special investigative techniques referred to in paragraph 1 at the international level, on the basis of agreements or arrangements.

3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part.

Article 16
Transfer of proceedings[40]

States Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.

Article 17
Recognition of foreign judgements[41]

Each State Party shall take legislative measures to recognize, in their domestic law, the previous foreign conviction for an offence established in article(s) ___ [alternatively: for an offence covered by this Convention] for the purpose of establishing the criminal history of the alleged offender.

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[39]It was suggested that the *travaux préparatoires* should include definitions of electronic surveillance and undercover operations.

[40]Some delegations felt that the subject matter of this article could be best treated under article 9, paragraph 5, or those portions of articles 11 and 12 that deal with domestic prosecution in lieu of extradition of nationals.

[41]This article was the subject of extensive discussion. While it was agreed that for purposes of investigation, prosecution and adjudication information on the criminal history of a suspect or defendant might be requested, there were difficulties in formal recognition of foreign judgements. Some delegations felt that it would be useful if a prior foreign conviction were to be taken into account in subsequent sentencing proceedings. In connection with this article, three possible solutions were envisaged by some delegations: (a) prior convictions could be considered information, along the lines of article 18 *bis*; (b) States could undertake to respond to requests, made in the context of mutual legal assistance, related to prior convictions of an individual; and (c) the article could be redrafted in a more discretionary manner, that is, "Each State should adopt ...".

Article 18
Protection of witnesses and victims[42]

1. Each State Party shall adopt measures to provide effective and appropriate protection from potential retaliation or intimidation for witnesses in its criminal proceedings who agree to give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.[43]

2. The measures envisaged in paragraph 1 include:[44]

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and to permit, where appropriate, non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology or other means in a manner not prejudicial to the rights of the defence.[45]

3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1.

4. States Parties shall take measures to provide assistance to victims of crimes covered by this Convention, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against the offenders in a manner not prejudicial to the rights of the defence, and establish procedures relating to restitution by offenders to victims of such crimes.

Article 18 bis
Measures to enhance cooperation with law enforcement authorities

1. States Parties shall promote appropriate methods of obtaining information and testimony from persons who are willing to cooperate in the investigation and prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] and shall, as appropriate, assist each other in promoting such cooperation.

2. In particular, each State Party shall [ensure] [consider the possibility of ensuring] that its domestic legal framework permits the possibility, in appropriate cases, that either:

(a) Immunity from prosecution may be granted to a person who provides substantial cooperation with law enforcement authorities in the investigation and prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention]; or

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[42]The drafting of this article requires further consideration.

[43]This term is intended to cover persons who may be subject to danger by virtue of a particularly close relationship with the witness, but who are not relatives.

[44]Depending on the final wording of this paragraph, some of the measures set forth could be optional rather than required.

[45]One delegation expressed the view that the text should make clear that these measures need to be consistent with the right of the defence to cross-examination.

(b) Substantial cooperation provided by an accused person in the investigation and prosecution of an offence established in article(s) ___ [alternatively: of an offence covered by this Convention] may be considered a mitigating factor in determining the person's punishment.

3. Protection of such persons shall be as provided for in article 18.

4. In principle, the benefit of immunity granted to a state witness shall have effect only in the State Party that granted such immunity. If a second State Party acquires the testimony given by a state witness, such testimony may be used against persons other than the person so cooperating. The State utilizing such testimony shall be required to grant the benefit of immunity to the state witness and may consequently not use such testimony or any evidence directly resulting therefrom against such person. Two or more States may jointly grant benefits of immunity when a transnational organization is under investigation.[46]

5. A State Party may grant benefits to state witnesses in respect of offences committed in the territory of another State Party, and the cooperation of state witnesses may be evaluated with a view to granting them immunity or reduced penalties in conformity with the laws of the first-mentioned State. When a state witness is required to testify before the court of another country, States shall facilitate his or her transfer to the State requiring such testimony. This privilege shall override the claim of a third State to impose punishment.

Article 19
Law enforcement cooperation[47]

1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies.

2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) ___ [alternatively: the offences covered by this Convention]. Each State Party shall, in particular, adopt effective measures:

(a) To establish and maintain channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of a central authority or authorities, to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with one another in conducting inquiries, with respect to offences established in this Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

(ii) The movement of proceeds or property derived from the commission of such offences;

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[46]Paragraphs 4 and 5, on cooperation with law enforcement authorities, were not discussed at the informal preparatory meeting.

[47]While supporting the idea of direct law enforcement cooperation, some delegations felt that this article needed further consideration in order to direct attention to its relationship with more traditional means of cooperation such as mutual assistance.

(iii) The movement of instrumentalities used or intended for use in the commission of such offences;

(c) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;

(d) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(e) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers.

3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) ___ [alternatively: the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[48]

(a) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) ___ [alternatively: of offences covered by this Convention].

[4. States Parties shall:[49]

(a) Designate knowledgeable law enforcement personnel to be available on a 24-hour basis to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology; and

(b) Review their domestic criminal legislation to ensure that such abuses are adequately addressed.]

Article 20
Collection and sharing of information on organized crime

1. States Parties shall consider developing and sharing analytical expertise concerning organized crime activities. In this connection, common definitions, standards and methodologies shall be applied as appropriate.

2. States Parties shall consider, with the support of the scientific community, analysing trends in organized crime in their countries, as well as the circumstances in which organized crime can operate, the professional groups involved and the communications technologies.

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[48]It was proposed that subparagraphs (a) and (b) of this paragraph be transferred to paragraph 2.

[49]This is a new issue proposed for the first time during the informal preparatory meeting and discussed only preliminarily.

3. States Parties shall consider monitoring their policies and actual measures to prevent and combat organized crime and shall make assessments of their effectiveness and efficiency.

4. The Secretary-General, with the assistance of the United Nations Interregional Crime and Justice Research Institute and the other institutes in the United Nations Crime Prevention and Criminal Justice Programme network, shall undertake to collect and analyse public information and research findings concerning organized crime, prepare overviews of global trends in organized crime and prepare inventories of policies and measures to prevent and control organized crime.

Article 21
Training and technical assistance[50]

1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:[51]

(a) Methods used in the prevention, detection and control[52] of the offences established in this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences established in this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of import and export of contraband;

(d) Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations; and

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology.

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[50]Several delegations expressed concern about the fact that this article does not make reference to the role of the United Nations in the provision of training and technical assistance. A draft paragraph or paragraphs on this could be inserted.

[51]It was suggested that the ad hoc committee might wish to consider the establishment, subject to the availability of extrabudgetary resources, of a database that would include training materials as well as information concerning available training programmes. It was also noted that this task could be carried out by an institute in the Programme network.

[52]One delegation expressed concern about the appropriateness of this term in this context.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance. Such techniques may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization (Interpol) and within other relevant bilateral and multilateral agreements or arrangements.

Article 22
Prevention[53]

1. States Parties shall consider taking steps to reduce to the extent possible existing social, legal, administrative or technical opportunities for criminal organizations to commit profitable crimes and to alleviate the circumstances that make socially marginalized groups vulnerable to the prospect of a criminal career.

2. States Parties shall consider setting up or supporting technical cooperation programmes aimed at the prevention of organized crime by social, legal or technical means and shall encourage international funding agencies to promote such programmes.

3. States Parties shall consider collecting and exchanging information with respect to registered legal persons and the physical persons involved in their creation, direction and funding, with a view to preventing the penetration of organized crime in the public and legitimate private sector.

4. States Parties shall consider reviewing their national legislation in order to ensure that it provides for the opportunity to exclude from participation in tender procedures conducted by the State applicants who have committed offences connected with organized crime or whose funds have been illegally acquired.

5. States Parties undertake that their organs and services, in particular their security services, will under no circumstances cooperate with criminal organizations in any way other than using individual informers in the fight against the crimes in which such organizations engage.[54]

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[53]There was widespread acceptance of the principle that the Convention should include provisions on prevention. The delegation of the Netherlands undertook to provide a new text for the first meeting of the ad hoc committee.

[54]This proposal was not discussed at the informal preparatory meeting.

Article 23[55]

Option 1

Article 23
Role of the United Nations and other relevant organizations[56]

1. For the purpose of examining the progress made by States Parties in achieving the fulfilment of the obligations undertaken in the present Convention, these States will provide periodic reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

2. States Parties undertake to provide such reports within two years of the entry into force of the Convention for the State concerned, and thereafter every five years.

3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

4. A State Party that has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

5. The Commission may request from the States Parties further information relevant to the implementation of the Convention.

6. States Parties shall provide, as appropriate, reports to the Secretary-General on current and emerging organized crime activities in their States,[57] as well as on their experience with preventive measures and control measures.[58]

7. The Commission shall make its recommendations and submit reports on its activities to the Economic and Social Council, in accordance with existing provisions.

8. States Parties shall make their reports widely available to the public in their own countries.[59]

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[55]The content of this article requires further consideration.

[56]It was suggested that this article would require extensive redrafting since it included language that would perhaps be more appropriate in a resolution rather than in a treaty. Furthermore, it was suggested that a monitoring or follow-up mechanism would require a thorough discussion of issues such as confidentiality in respect of any reports containing sensitive operational information and involvement of non-governmental organizations.

[57]Some delegations felt that it might be difficult for States Parties to provide reports on sensitive ongoing investigations.

[58]It was suggested that provisions might be inserted in this article on the possible role of the United Nations in preparing reports on current and emerging organized criminal activities, as well as on national experience with preventive measures and countermeasures, and in collecting and analysing information and research findings.

[59]A number of delegations thought that public dissemination of reports might not be advisable.

9. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) Intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council and other invited multilateral organizations shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations entities to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Commission shall transmit, as it may consider appropriate, to the intergovernmental and non-governmental organizations, other multilateral organizations and the specialized agencies any reports from the States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on those requests or indications;

(c) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

(d) The Commission may make suggestions and general recommendations based on information received pursuant to article(s) ____ of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the Economic and Social Council, together with comments, if any, from the States Parties.

Option 2

Article 23
Monitoring of implementation[60]

1. States Parties shall cooperate in carrying out a programme of systematic monitoring of the implementation of the measures provided for by this Convention to combat organized crime.

2. A committee of the States Parties shall be established for the purpose of carrying out monitoring functions under this article. The Committee shall:

(a) Adopt periodic reports evaluating implementation by States Parties and adopt and issue reports on its own activities;

(b) Promulgate procedures for assessing the level of implementation by States Parties (including with respect to submission of information by the Party being evaluated, the formation of evaluation teams made up of experts from States Parties to visit that Party and preparation of a preliminary evaluation for consideration by the Committee, and the discussion and adoption of the final evaluation report) and for carrying out its other functions.

3. Meetings of the Committee shall be held at [insert location] once a year or, where circumstances require, in special session. They shall be held in camera.

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[60]This is a new proposal and was discussed only preliminarily.

4. Every effort shall be made to reach decisions by consensus in the Committee. If consensus cannot be reached, decisions on substantive matters must be approved by a two-thirds majority of those States Parties present and voting, an absolute majority of States Parties constituting a quorum, while decisions on procedural matters shall be taken by a simple majority of those States Parties present and voting.

5. Expenses incurred in conjunction with the work of the Committee shall be paid from assessed contributions made by States Parties and voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Committee.

Article 24
Relation with other conventions

Option 1

This Convention shall not prejudice the application of other United Nations conventions on criminal matters.[61]

Option 2

The provisions of the present Convention shall prevail over those of other United Nations conventions dealing with the same matters.

Article 25
Settlement of disputes[62]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of ratification of or accession to this Convention declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to [the Secretary-General of the United Nations].

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[61]It was observed that this article might also have to address the relationship with bilateral and regional treaties.

[62]It was observed that consideration would need to be given to the 1988 Convention in drawing up this article.

Article 26
Signature, ratification, accession and reservations

1. This Convention shall be open to all States for signature from _____ to ____, and thereafter at the Headquarters of the United Nations in New York until ____.

2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

4. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.[63]

5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with [the Secretary-General of the United Nations].

Article 27
Entry into force[64]

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 28
Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States

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[63]It was suggested that paragraphs 3, 4 and 5 were not appropriate. The observation was also made that in order to ensure that reservations could not be made, an express provision to that effect was required. Otherwise, general international law on treaties (and in particular the Vienna Convention on the Law of Treaties) would nonetheless allow reservations to be made. Other delegations expressed their strong preference for an article that would specifically allow for reservations.

[64]The number of instruments of ratification foreseen in this article is the same as that required in the 1988 Convention. One delegation thought that 40 might be a more appropriate number.

Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted.

Article 29
Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 30
Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Convention.

2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

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15 December 1998

ORIGINAL: ENGLISH

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
First session
Vienna, 19-29 January 1999

Draft elements for an international legal instrument against illegal trafficking and transport of migrants

(Proposal submitted by Austria and Italy)

When drafting an additional instrument to the Convention relating to the illegal trafficking and transport of migrants, the following elements should be included:

"PREAMBLE

"*Concerned* about the threat posed by the rapid development of illegal trafficking and transport of migrants, especially by sea,

"*Convinced* that the illegal trafficking and transport of migrants is a particularly heinous form of transnational exploitation of individuals in distress,

"*Concerned* that an increasing number of migrants are being smuggled for purposes of prostitution and sexual exploitation,

"*Convinced* that only a global approach to this phenomenon, including socio-economic measures, can lead to the suppression of this crime,

"*Desiring* to supplement the United Nations Convention against Transnational Organized Crime[a] by a protocol directed specifically against illegal trafficking and transport of migrants as a first step towards the eradication of this crime,"

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[a][To be completed.]

"CHAPTER I. GENERAL PROVISIONS

"*Article A*

"Any person who intentionally procures, for his or her profit, repeatedly and in an organized manner, the illegal entry of a person into another State of which the latter person is not a national or not a permanent resident commits the offence of 'illegal trafficking and transport of migrants' within the meaning of this Protocol.

"*Article B*

"1. Any person who attempts to commit or who commits an act constituting participation as an accomplice in any such trafficking and transport, in an attempt to commit such trafficking and transport or in organizing or ordering others to commit such trafficking and transport likewise commits an offence within the meaning of this Protocol.

"2. Any person whose illegal entry is procured or intended by such trafficking and transport shall not become punishable on account of such trafficking and transport.

"*Article C*

"For the purpose of this Protocol,

"(a) 'Illegal entry' means the crossing of borders without disposing of the necessary requirements for legal entry into the receiving State;

"(b) The illegal entry into the territory of another State Party shall be considered equal to the illegal entry into the territory of the State Party concerned.

"*Article D*

"If more than one State Party intends to resume jurisdiction over an alleged offender in accordance with article 9 of the Convention, the States Parties concerned shall consult each other with a view to renouncing jurisdiction in order to make possible proceedings in the State Party most directly affected by the commission of the trafficking and transport.

"CHAPTER II. SPECIAL PROVISIONS ON THE ILLEGAL TRAFFICKING AND TRANSPORTING OF MIGRANTS BY SEA

"*Article E*

"1. For the purpose of chapter II, 'vessel' means ship of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submarines or any other floating craft.

"2. Chapter II of this Protocol does not apply to:

"(a) Warships; or

"(b) Ships owned or operated by a State when being used for non-commercial government purposes.

"*Article F*

"1. Nothing in chapter II of this Protocol shall affect in any way the rules of international law concerning the exercise of:

"(a) State powers related to investigations or to the accomplishment of administrative functions on board vessels not flying their flag;

"(b) The right of any State to adopt, in international waters, the measures under articles H and I below, with respect to a vessel having no nationality or flying the flags of more than one country and using them at its convenience, when reasonable grounds exist to believe that it is involved in the trafficking of migrants, provided that one of the following links with that State exists:

"(i) Based on its route, the vessel is undoubtedly bound for its coasts;

"(ii) The vessel is armed or governed or manned by nationals.

"2. If a measure is taken in implementation of this article, the States Parties concerned shall take into due account the need not to impair the security of human life at sea and the safety of the vessel and its cargo, as well as the commercial and legal interests of any other State concerned and those of the State of which the migrants and crew are nationals.

"*Article G*

"Each State Party that has reasonable grounds to believe that a vessel flying its flag—or flying no flag, or a vessel which, even if flying a foreign flag or refusing to fly its flag, has actually the same nationality as the vessel exercising the right under article F, paragraph 1 (b)—is involved in the trafficking of migrants, may request the assistance of other States Parties to combat such trafficking. The requested Parties shall offer any reasonable assistance necessary in order to achieve this goal.

"*Article H*

"Each State Party that has reasonable grounds to believe that a vessel flying the flag of or registered with another State Party, navigating freely in accordance with international law, is involved in the trafficking of migrants may notify the State whose flag it flies, request a verification of the registration and, after receiving confirmation, may request authorization to adopt the necessary measures to guarantee the control and containment of the flow of individuals bound for its territory, which may include verifying the vessel's right to fly its flag, stopping the vessel, boarding it and diverting it.

"*Article I*

"Activities related to verifying the vessel's right to fly that flag, stopping, boarding and diverting the vessel shall be performed in the following manner:

"(a) Verifying the vessel's right to fly its flag: the vessel may be requested to give information on its nationality and the nationality of its crew, its port of departure and its destination;

"(b) Stopping the vessel: the vessel may be ordered to stop or to change course and reduce speed appropriately, following the procedures mentioned in subparagraph (a) above, so that a team of inspectors may board the vessel to ascertain the truth of the information communicated and whether any migrants are on board;

"(c) On-board visit: when the vessel is stopped or has changed course as ordered and at the speed ordered, the aforementioned inspection team shall board the vessel to carry out the necessary verification of documents and inspections, in order to ascertain whether the vessel is involved in the trafficking of migrants;

"(d) Diversion: if the vessel refuses to permit an on-board visit or if the on-board inspection reveals that irregularities are being committed, the vessel shall be ordered to go back to the port of departure or to divert to the nearest port of a Contracting Party, designated according to article L below, and the State of which the migrants are nationals shall be informed of the outcome of the on-board visit. If the vessel fails to comply with such order, it shall be escorted to the prescribed destination.

"Article J

"All measures taken in order to comply with the provisions under articles G, H and I above shall be implemented only by warships or military naval craft.

"Article K

"1. No activity undertaken within the scope of articles G, H and I above may in any way jeopardize the safety of the vessel or the commercial interests of the State whose flag it flies or of any other State, or interfere with the exercise of the rights of jurisdiction of any other coastal State.

"2. Any State Party that has undertaken any action under the terms of articles G, H and I above shall promptly notify the flag State of its final outcome.

"3. Each State Party shall designate the competent authority—or competent authorities, where necessary—for receiving and responding to the requests referred to in articles G and H above. The designation shall be notified to the Secretary-General of the United Nations and to all the other Parties within one month of the designation.

"Article L

"Each State Party shall:

"(a) Designate as soon as possible the ports to which vessels caught in flagrante delicto of transporting migrants can be diverted;

"(b) Take control of the vessels referred to in subparagraph (a) above that are diverted to its ports in order to prevent the commission of further illegal activities;

"(c) Authorize the vessel or the aircraft that is acting under article I above to redeploy in the ports designated to this end for technical purposes;

"(d) Provide berthing facilities and water supplies for the port visits referred to in subparagraph (c) above.

"Article M

"Articles F-K above shall apply when:

"(a) The vessel on which the trafficking and transport of migrants is under way is entering into the territorial waters of a Contracting Party;

"(b) There are reasonable grounds to suspect that such vessel is bound for entering into the territorial waters or otherwise procuring the illegal entry of migrants into the territory of a Contracting Party.

"CHAPTER III. FINAL PROVISIONS

"*Article N*

"1. States Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, in respect for the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States.

"2. States Parties shall consider the conclusion of bilateral or regional agreements or understandings aimed:

"(a) At establishing the most appropriate and effective measures to prevent, combat and limit illegal trafficking and transport of migrants, in accordance with this Protocol; or

"(b) At enhancing the provisions of this Protocol among themselves.

"*Article O*

"When there are reasonable grounds to believe that a crime is being committed, as defined in this Protocol, the States Parties that might be concerned for any reason shall cooperate and exchange any useful information, in accordance to their national legislation, and shall coordinate any other administrative measures among themselves.

"*Article P*

"Except if otherwise provided for, the provisions of the Convention shall apply.

"*Article Q*

"1. For the purpose of examining the progress made by States Parties in achieving the implementation of the obligations undertaken in the present Protocol, States Parties shall provide periodic reports to the United Nations Commission on Crime Prevention and Criminal Justice.

"2. States Parties shall provide such reports together with the reports submitted in accordance with article 23 of the Convention.

"*Article R*

"The provisions of this Protocol shall be without prejudice to the obligations of States Parties under the 1951 Convention[b] and the 1967 Protocol[c] relating to the Status of Refugees.

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[b]United Nations, *Treaty Series*, vol. 189, No. 2545.

[c]Ibid., vol. 606, No. 8791.

"*Article S*

"1. This Protocol is open for signature to all States until _____ at the Headquarters of the United Nations in New York.

"2. This Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. This Protocol is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

"*Article T*

"1. This Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

"2. For each State ratifying or acceding to this Protocol after the deposit of the twentieth instrument of ratification or accession, the Protocol shall enter into force on the thirtieth day after deposit by such State of the instrument of ratification or accession.

"*Article U*

"1. Any State Party may withdraw from this Protocol by written notification to the Secretary-General of the United Nations.

"2. Withdrawal shall take effect twelve months after the date on which notification is received by the Secretary-General of the United Nations.

"*Article V*

"The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States."